IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2556 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GAYATRI SALT SUPPLIERS

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

MR KETAN D SHAH for the Petitioner.

MR SN SINHA for the Respondent.

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of Judgment: 12/07/2004

ORAL JUDGMENT

Rule. Learned counsel appearing for the respondent waives service of notice of Rule. The present petition has been preferred under Article 227 of the Constitution of India, whereby the petitioner has

challenged the order dated 11th December, 2003 in Appeal No. A-92/2003 whereby the appeal of the petitioner has been partly allowed and factor D-1 has been taken into consideration at 134 x 24 and D-2 at 47 x24 alongwith other directions.

2. The learned counsel for the petitioner mainly submitted not on method of theft of electrical energy but mainly on method of calculation of Factor D-1 and D-2 which is calculated by the respondent for 24 hours. The main thrust of the argument of the learned counsel was that the petitioner being a salt manufacturing process unit is using electricity for pumping out the sea water from their respective salt pans and therefore, as and when water is available in creek, the petitioner is using electrical energy. He submitted that time and tide wait for none much less for the petitioner. The water will not remain as it is in the creek for the availability of the petitioner. In fact, it is also a phenomena known to the respondent authority that in a creek, sea water is never available for 24 hours. It is also emphasised by the learned counsel for the petitioner that in similarly situated other matters, several petitions were filed before this Court and same arguments as to the 24 hours usage of electricity was argued at length by both the sides and ultimately, this Court vide its order dated 9th May, 1996 in Special Civil Application nos. 1359, 2195 and 2039 of 1996 while remanding the cases, has observed as under:

" The petitioners contend that salt manufacture at their unit depends on sea tide and in very nature of things it is not possible that unit can work for more than one shift. The appellate committee has not considered this aspect of the matter while upholding the supplementary bill on the basis of three shifts.

From the averments made in the petition, memo of appeal before the appellate court, and other documents, I am satisfied that the appellate committee has apparently erred in not considering the said contention and has ignored the relevant material in that regard place before it. Hence, the order suffers from error apparent on the face of record and its findings stand vitiated.

Accordingly, the petitions succeed. The order of the appellate committee is set aside in each case. The appellate committee is directed to decide the appeal of the petitioners in each case afresh in accordance with law. Rule made absolute. No order as to costs."

3. As per the aforesaid directions in the

earlier similarly situated matters of salt manufacturers, the appellate committee of the respondent has responded in favour of those petitioners while deciding the matters afresh vide order dated 24th October, 1996. Tide table of creek water whether available for 24 hours or not as argued before this Court in writ petition and before appellate committee of the respondent has been discussed by the appellate committee in the earlier similarly situated matters which reads as under:

"It is then contended by the appellant that the Salt work depends upon he tide and the tide water is not available for 24 hours a day. The tide water is available only for 7 hours a day and hence, it was not proper on the part of the respondent no. 2 to issue special bill on the basis of salt work running for 24 hours. In support of his contention, the appellate has produced the tide table of Kandla Port. On perusal of this tide table, it appears that on the full moon day, the tide is high and sufficient water is available for salt work and on other days, sufficient water is not available for salt work. We may state here that tide water is available twice a day. Considering this factor, we are of the opinion that the salt work might be running at least for 8 hours a day considering the fact that the water accumulated in the pond is required to be lifted for one hour. In view of this matter, we are inclined to take load factor (C) as 0.3."

4. The aforesaid aspect of the matter which has been considered by the appellate committee of the respondent board has not been at all appreciated by the appellate committee in the present case, while deciding the matter of the petitioner, though the petitioner presented same arguments before the appellate committee and calculation as to the availability of sea water in creek was presented before appellate committee. Looking to the impugned order dated 11th December, 2003 in appeal no. A-92/03, passed by the appellate committee, the factors D-1 and D-2 have been considered, as if electricity is consumed for 24 hours.

5. The learned counsel for the respondent submitted that the petitioner has got an alternative efficacious remedy available to it by way of filing a suit and therefore, the petitioner should prefer a suit instead of writ petition. There is no power of review vested in the appellate committee and therefore, the order of remand will not be in accordance with law. He also submitted that the present order has been passed by the appellate committee keeping in mind the facts of the present petitioner and as the facts were different in

earlier matters, the different order was passed by the appellate committee.

6. I have perused the case papers and the impugned order passed by the appellate committee as well as the order passed by this Court in Special Civil Application nos. 1359, 2915 and 2039 of 1996 and the order passed by the appellate committee, after remand orders (in writ petitions). It appears from the order passed in the present case, by the appellate committee that the appellate committee has not appreciated the most important aspect of the matter as to the availability of the creek water, whether for 24 hours or not and whether the petitioner is in possession to use electricity for 24 hours or not. The present matter is similarly situated to the earlier petition decided by this Court vide its order dated 9th May, 1996. By the said order, the case was remanded to the appellate committee whereby the appellate committee had passed its order dated 24th October, 1996 wherein it was appreciated by the appellate committee of the respondent that tide water is available only for seven hours a day and therefore, it was not proper on the part of the Gujarat Electricity Board to issue special bill on the basis of the salt work running for 24 hours. The paragraph of the decision of the appellate committee dated 24th October, 1996 has already been reproduced hereinabove. The learned counsel for the petitioner also submitted that Factor C which has been decided as 0.3 in the earlier matter has not been appreciated while deciding the present matter of the petitioner by the appellate committee and instead of 0.3, the factor-C has been considered as point no.4.

7. In view of the aforesaid facts and circumstances, this petition is allowed. The order dated 11th December, 2003 in Appeal No. A-92/2003 passed by the appellate committee is hereby quashed and set aside as there is error apparent on the face of the record. The order of the appellate committee, therefore, stands vitiated. I direct the appellate committee to decide the appeal of the present petitioner, in accordance with law, as early as possible and practicable and preferably within a period of eight weeks from the date of receipt of writ from this Court, keeping in mind the observations made in this judgment and after giving an opportunity of hearing to both the sides. Rule made absolute with no order as to costs. Direct service permitted.

(D.N.Patel,J)

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